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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TERRY LEE BELL,  
Petitioner,  
  
v.  
J. SOTO, Warden,  
Respondent.  
  
AND  
NATALIE DEMOLA,  
Petitioner,  
  
v.  
DEBORAH K. JOHNSON, Warden,  
Respondent.

No. ED CV 08-1913 JLS (SS) &  
No. ED CV 10-0014 JLS (SS)<sup>1</sup>

ORDER ACCEPTING FINDINGS,  
CONCLUSIONS AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the  
Petitions filed respectively by Petitioners Bell and DeMola, all  
the records and files herein, the Report and Recommendation of

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<sup>1</sup> Terry Lee Bell was tried jointly with co-defendant Natalie  
DeMola. Accordingly, on August 8, 2011, the Court consolidated  
their respective habeas actions in the interests of judicial  
economy. (Dkt. No. 32).

1 the United States Magistrate Judge, and Petitioner DeMola's  
2 Objections ("Objections").<sup>2</sup> After having made a de novo  
3 determination of the portions of the Report and Recommendation to  
4 which Objections were directed, the Court concurs with and  
5 accepts the findings and conclusions of the Magistrate Judge.  
6 However, the Court herein addresses certain arguments raised in  
7 DeMola's Objections.

8  
9 DeMola objects to the Report and Recommendation's resolution  
10 of Ground One of her Petition, arguing her rights under Miranda  
11 v. Arizona, 384 U.S. 436 (1966), were violated when statements  
12 she made were admitted into evidence against her. (Objections at  
13 1-4). In particular, DeMola argues that the California Court of  
14 Appeal unreasonably failed to examine all the circumstances  
15 surrounding her questioning at the scene of a car accident  
16 following the attack on her mother. (Id.). DeMola asserts that  
17 "[a]ny reasonable person, especially a 16-year old minor, in  
18 DeMola's circumstances would feel deprived of her freedom of  
19 movement[,] and the California Court of Appeal unreasonably  
20 applied Miranda in rejecting Ground One."<sup>3</sup> (Id. at 2).

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21 <sup>2</sup> The time for filing Objections to the Report and Recommendation  
22 has passed and no Objections have been received from Petitioner  
23 Bell.

24 <sup>3</sup> DeMola's Objections also for the first time assert that the  
25 California Court of Appeal unreasonably determined the facts  
26 underlying her Miranda claim. (See Objections at 1-4). However,  
27 DeMola does not identify any allegedly erroneous factual  
28 determination the state court made. (Id.); see also Greenway v.  
Schriro, 653 F.3d 790, 804 (9th Cir. 2011) (A "cursory and vague  
claim cannot support habeas relief."); James v. Borg, 24 F.3d 20,  
26 (9th Cir. 1994) ("Conclusory allegations which are not  
supported by a statement of specific facts do not warrant habeas  
relief."). Rather, the gravamen of her argument is that the

1       However, “an unreasonable application of federal law is  
2 different from an incorrect application of federal law.”  
3 Harrington v. Richter, 131 S. Ct. 770, 785 (2011) (citation and  
4 italics omitted); Cullen v. Pinholster, 131 S. Ct. 1388, 1411  
5 (2011). Thus, “a federal habeas court may not issue the writ  
6 simply because that court concludes in its independent judgment  
7 that the relevant state-court decision applied clearly  
8 established federal law erroneously or incorrectly.” Renico v.  
9 Lett, 559 U.S. 766, 773 (2010) (citation omitted); see also  
10 Richter, 131 S. Ct. at 786 (“It bears repeating that even a  
11 strong case for relief does not mean the state court’s contrary  
12 conclusion was unreasonable.”). Rather, the state court decision  
13 “must be ‘objectively unreasonable.’” Lett, 559 U.S. at 773;  
14 Waddington v. Sarausad, 555 U.S. 179, 190 (2009). That is, “a  
15 state prisoner must show that the state court’s ruling on the  
16 claim being presented in federal court was so lacking in  
17 justification that there was an error well understood and  
18 comprehended in existing law beyond any possibility for  
19 fairminded disagreement.” Richter, 131 S. Ct. at 786-87; Dyer v.  
20 Hornbeck, 706 F.3d 1134, 1139 (9th Cir. 2013). In other words, a  
21 “state court’s determination that a claim lacks merit precludes  
22 federal habeas relief so long as ‘fairminded jurists could  
23 disagree’ on the correctness of the state court’s decision.”  
24 Richter, 131 S. Ct. at 786 (quoting Yarborough v. Alvarado, 541  
25 U.S. 652, 664 (2004)). Moreover, “the range of reasonable  
26  
27 California Court of Appeal unreasonably applied Miranda in  
28 determining that, under the totality of the circumstances, she  
was not in custody when questioned following the car accident.  
(Id.).

1 judgment can depend in part on the nature of the relevant rule."  
2 Alvarado, 541 U.S. at 664. "'The custody test is general,' and  
3 '[t]he more general the rule, the more leeway courts have in  
4 reaching outcomes in case-by-case determinations.'" Stanley v.  
5 Schriro, 598 F.3d 612, 619 (9th Cir. 2010) (quoting Alvarado, 541  
6 U.S. at 664-65).

7  
8 Here, as the Report and Recommendation explained in depth,  
9 (see Report and Recommendation at 35-50), DeMola is not entitled  
10 to habeas corpus relief because the California Court of Appeal  
11 "delineated and weighed factors comparable to those the Supreme  
12 Court has considered" and "reasonably applied federal law in  
13 determining that [DeMola] was not in custody" when questioned  
14 after the car accident. Stanley, 598 F.3d at 619; see also  
15 Alvarado, 541 U.S. at 664-66 (state court reasonably applied  
16 clearly established federal law since "fairminded jurists could  
17 disagree over whether Alvarado was in custody" in that "certain  
18 facts weigh[ed] against a finding that Alvarado was in custody"  
19 while "[o]ther facts point in the opposite direction").

20  
21 DeMola also asserts that the Court should grant relief or  
22 order an evidentiary hearing on Ground Six, which alleges that a  
23 juror committed misconduct by conducting an out-of-court  
24 experiment and presenting the results to the rest of the jury.  
25 (Objections at 4-5). DeMola contends that in rejecting this  
26 claim, the California Court of Appeal overlooked the fact that  
27 the trial court never reached the merits of the problem to  
28 determine whether misconduct occurred. (Id.). However, as the

1 Report and Recommendation explained, the trial court held a  
2 hearing to investigate whether any misconduct occurred and  
3 concluded that the jury was not improperly exposed to extrinsic  
4 evidence. (See Report and Recommendation at 66-79). The trial  
5 court also reconsidered this issue in a new trial motion and  
6 again rejected the claim. (Id.). Given these facts and  
7 circumstances, the California Court of Appeal's rejection of this  
8 claim was not contrary to, or an unreasonable application of,  
9 clearly established federal law, and it was not based on an  
10 unreasonable determination of the facts.

11  
12 Accordingly, **IT IS ORDERED** that the Petitions are denied and  
13 Judgment shall be entered dismissing these actions with  
14 prejudice.

15  
16 **IT IS FURTHER ORDERED** that the Clerk serve copies of this  
17 Order and the Judgment herein on counsel for Petitioners and  
18 counsel for Respondent.

19  
20 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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22  
23 DATED: May 20, 2015



24 JOSEPHINE L. STATON  
25 UNITED STATES DISTRICT JUDGE  
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